

1 STATE OF NEW HAMPSHIRE
2 SITE EVALUATION COMMITTEE

3 February 11, 2008 - 9:06 a.m.
4 N.H. Public Utilities Commission
5 21 South Fruit Street, Suite 10
6 Concord, New Hampshire

7 In re: SITE EVALUATION COMMITTEE:
8 Public meeting and public hearing:
9 Docket No. 2008-01: Joint Application
10 of Newington Energy, LLC (NEL) and
11 North American Energy Alliance, LLC
12 (NAEA) (Co-Applicants) for Approval of
13 Transfer of Membership Interests in NEL.
14 Docket No. 2008-02: Promulgation of
15 Organizational and Procedural Rules.

16 PRESENT: SITE EVALUATION COMMITTEE:
17 Thomas S. Burack, Cmsr. Dept. of Environmental Services
18 (Chairman of SEC - Presiding Officer)
19 Thomas B. Getz, Chrmn. Public Utilities Commission
20 (Vice Chairman of SEC)
21 Graham Morrison, Cmsr. Public Utilities Commission
22 Clifton C. Below, Cmsr. Public Utilities Commission
23 Harry Stewart, Dir. DES - Water Division
24 George Bald, Cmsr. Dept. of Resources & Econ. Dev.
25 Allison McLean, Dir. Division of Parks & Recreation
26 Amy Ignatius, Dir. Office of Energy & Planning
27 Philip Bryce, Dir. Div. of Forests & Lands (DRED)
28 Robert Scott, Dir. Air Resources Div. (DES)
29 Donald Clark, Dir. Fish & Game Department
30 Brook Dupee Dept. of Health & Human Services
31 Michael Harrington Public Utilities Commission

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33
34 COURT REPORTER: STEVEN E. PATNAUDE, LCR No. 52

1

2 ALSO PRESENT: Michael Iacopino, Esq.
Counsel for the Committee

3

4 Suzanne G. Amidon, Esq. (N.H. PUC)

5

6 APPEARANCES: Reptg. Newington Energy, LLC:
Donald E. Pfundstein, Esq. (Gallagher..)
Erik Duncan, Esq. (Gallagher...)

7 Reptg. North American Energy Alliance:
Barry Needleman, Esq. (McLane, Graf...)
Jarrett Duncan, Esq. (McLane, Graf...)

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1 P R O C E E D I N G S

2 CHAIRMAN BURACK: Good morning. I'd
3 like to call to order the meeting of the New Hampshire
4 Site Evaluation Committee. My name is Tom Burack. I
5 serve as Commissioner of the State Department of
6 Environmental Services, and in that capacity also serve as
7 Chairman of this Site Evaluation Committee. We are here
8 today for a public meeting of this Committee. And, as
9 many of you already know, this Committee was established
10 by RSA 162-H. The membership of this Committee includes
11 the Commissioners or Directors of a number of state
12 agencies, as well as specified key personnel from various
13 state agencies.

14 At this point, I would like to introduce
15 the members of the Committee who are present at this
16 meeting. Actually, ask them if they would please
17 introduce themselves.

18 MR. DUPEE: Brook Dupee, here from the
19 Department of Health & Human Services.

20 DIR. McLEAN: Allison McLean, Division
21 of Parks & Recreation, Department of Resources & Economic
22 Development.

23 DIR. BRYCE: Phil Bryce, Director of
24 Forests & Lands, Department of Resources & Economic

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1 Development.

2 DIR. STEWART: Harry Stewart, Water
3 Division Director, Department of Environmental Services.

4 CMSR. BELOW: Clifton Below, Public
5 Utilities Commissioner.

6 VICE CHAIRMAN GETZ: Tom Getz, Chair of
7 the Public Utilities Commission and Vice Chair of the Site
8 Evaluatioin Committee.

9 CMSR. MORRISON: Graham Morrison, PUC.

10 MR. HARRINGTON: Michael Harrington,
11 PUC.

12 DIR. IGNATIUS: Amy Ignatius, from the
13 Office of Energy & Planning.

14 DIR. SCOTT: Bob Scott, from the
15 Department of Environmental services.

16 CMSR. BALD: George Bald, with the
17 Department of Resources & Economic Development.

18 CHAIRMAN BURACK: Great. Thank you,
19 all. To my immediate left is Michael Iacopino, who serves
20 as Counsel to the SEC for the first matter we're going to
21 take up today. But, before we get to that particular
22 item, Mr. Getz, you have a motion you need to take here?

23 VICE CHAIRMAN GETZ: Yes. Under Chapter
24 RSA 162-H provides that the Public Utilities Commission

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1 will appoint a Staff engineer for each proceeding. So,
2 for purposes of the docket 2008-01, in the Newington
3 Energy petition, I would move that, and this is a vote for
4 my colleagues on the Public Utilities Commission, I would
5 move that we appoint Mike Harrington as the Staff engineer
6 for purposes of the Newington proceeding.

7 CMSR. MORRISON: I second.

8 CMSR. BELOW: And, I have a question.
9 Would that include for rulemaking or have we already done
10 that for the rulemaking?

11 VICE CHAIRMAN GETZ: He's already been
12 appointed for the rulemaking proceeding.

13 CMSR. BELOW: That's fine. Okay. So,
14 I'm in favor. I concur.

15 VICE CHAIRMAN GETZ: Then, just note for
16 the record that the motion carries, and Mr. Harrington has
17 yet another responsibility.

18 CHAIRMAN BURACK: Very good. Thank you.
19 We do have two items on today's agenda. The first item is
20 an initial review of the Joint Application of Newington
21 Energy, LLC, as well as North American Energy Alliance,
22 LLC, also known as "NAEA", for approval of transfer of
23 membership interests in Newington Energy, LLC, also known
24 as "NEL". Going to have a lot of abbreviations here and

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1 acronyms today.

2 The second item on today's agenda is
3 part of the rulemaking process and is a public hearing
4 regarding the promulgation of organizational and
5 procedural rules for the Site Evaluation Committee.

6 At this point, we will proceed with our
7 first agenda item. Again, this is the Joint Application
8 of NEL and NAEA, who are the co-applicants, seek approval
9 from the Site Evaluation Committee to transfer the
10 membership interests in NEL from CED/SCS, Newington LLC, a
11 Delaware Limited Liability Company, also known as
12 "CED/SCS", to NAEA. NEL operates a nominal 525 megawatt
13 combined-cycle, dual fuel merchant electric generation
14 facility situated near the Piscataqua River in Newington,
15 New Hampshire, pursuant to a Certificate of Site and
16 Facility issued in Docket Number 98-01, effective May 25,
17 1999. The facility consists of two General Electric 7FA
18 combustion turbines, two heat recovery steam generators
19 with supplemental firing, and one steam turbine in
20 combined-cycle configuration. The facility has low NOx
21 burners and selective catalytic reduction for emissions
22 control. The primary fuel is natural gas and the
23 secondary fuel is ultra-low sulfur diesel.

24 In addition to the site proper, the
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1 facility includes a water supply pipeline and intake
2 structure in the Piscataqua River, and an electric
3 transmission line interconnecting the facility to the
4 substation at the Public Service of New Hampshire (PSNH)
5 Newington Power Station. A natural gas pipeline runs from
6 the Portland Natural Gas Transmission System and Maritimes
7 Northeast (joint facilities) interconnection point to the
8 site to transport the primary fuel. An oil transfer
9 pipeline, which is owned by Sprague Energy, transmits the
10 alternate diesel oil fuel to the site. One above ground
11 diesel fuel storage tank (AST), with one million gallons
12 of storage capacity, is also located on site.

13 The proposed transferee, NAEA, is owned
14 by Industry Funds Management, 37.55 percent, and Allco
15 Finance Group Limited, 62.45 percent. Subsequent to the
16 transfer of NEL to NAEA, the Co-Applicants submit that
17 day-to-day responsibility for facility operations will
18 continue to be handled by General Electric. General
19 Electric has operated the facility since the commercial
20 operation date of the facility in November 2002.

21 At this meeting, the Site Evaluation
22 Committee will review the Joint Application and address
23 the implementation of a procedural schedule in this
24 docket. The participation of the Co-Applicants, potential

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1 intervenors, and the public is welcome.

2 Notice of this meeting was published in
3 the Manchester Union Leader on February 1, 2008, in
4 Fosters Daily Democrat on January 31, 2008, and in the
5 Portsmouth Herald on February 4, 2008. We have received
6 an affidavit of publication from the Co-Applicants, and
7 that affidavit shall become part of the record. We will
8 begin by allowing the Co-Applicants an opportunity to
9 provide the Committee with the background of their
10 Application and explain the relief they are requesting and
11 the reasons why they are requesting such relief. The
12 floor will then be open to questions from the Committee,
13 followed by questions and/or comments from the public and
14 any potential intervenors. The Committee will then
15 proceed to determine a procedural schedule for resolution
16 of the docket.

17 So, let us start by inviting the
18 Co-Applicants to introduce themselves and to make their
19 presentation. Mr. Pfundstein.

20 MR. PFUNDSTEIN: Thank you, Mr.
21 Chairman. For the record, my name is Donald Pfundstein.
22 I am a lawyer with Gallagher, Callahan & Gartrell. And, I
23 have the pleasure of working with NEL and the good people
24 at Consolidated Edison. With me today is, to my right,

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1 your left, Michael Madia. Mr. Madia is the Vice President
2 and Chief Operating Officer of Consolidated Edison
3 Development. He also holds those titles with NEL. In
4 that capacity, he was the senior executive responsible for
5 the design, permitting, construction, financing and
6 operation of NEL. Also with me today is a colleague from
7 my office, Mr. Erik Newman, who has been helping me with
8 this application. And, Barry.

9 MR. NEEDLEMAN: Good morning. I'm Barry
10 Needleman, from the law firm of McLane, Graf, Raulerson &
11 Middleton. And, with me is Howard Kosel, from AllCapital
12 U.S., one of the owners, joint owners of NAEA, the
13 proposed transferee in this case. And, Don will speak
14 first and describe the background of the Application a
15 little bit, and then I'll speak more about the proposed
16 new owners, and at that time I'll provide a little bit
17 more background information. And, joining us is Jarrett
18 Duncan, who's an associate in my office that's been
19 assisting us in this matter.

20 CHAIRMAN BURACK: If you could wait,
21 hold on just a moment here. Director Clark.

22 MR. IACOPINO: Yes. Why don't you take
23 that seat.

24 DIR. CLARK: Thank you.

1 CMSR. BALD: Mr. Chairman, this is the
2 first time he comes to a meeting and he sits up front with
3 you?

4 DIR. CLARK: After it took me 15 minutes
5 to find it.

6 CMSR. BALD: Now I know where the power
7 is.

8 CHAIRMAN BURACK: Let me introduce
9 Donald Clark, acting Director of Department of Fish &
10 Game, who also serves as a member of the Site Evaluation
11 Committee. Welcome, Mr. Clark.

12 DIR. CLARK: Thank you.

13 MR. PFUNDSTEIN: Thank you, Mr.
14 Chairman. First of all, the Co-Applicants would like to
15 thank the Committee for convening so shortly after we
16 filed the Application. We know what it's like to try to
17 get this Committee together sometimes, so we do appreciate
18 that. The reason that we are here is to briefly outline
19 for you the reasons for the transfer of the membership
20 interest in NEL to NAEA.

21 Now, the notice for the public meeting
22 described that there would be a brief informational
23 presentation from the Co-Applicants. And, I must warn you
24 that, after speaking with your counsel, Mr. Iacopino, we

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1 decided the best way to proceed was to have that "brief"
2 presentation to come from counsel. So, we'll try to keep
3 it informational, but we'll also do our best to keep it
4 brief as well, so that matter may continue.

5 We -- The NEL facility, as it was
6 described by the Chairman, has operated very successfully,
7 since its original power-up. And, quite frankly, this is
8 sort of a bittersweet moment for both me and Mr. Madia,
9 because we're talking about the transfer of it to another
10 entity.

11 But, first of all, a little bit about
12 NEL. NEL is a 100 percent subsidiary of CED/SCS
13 Newington, LLC. But, in the last two weeks, Con Edison
14 acquired the minority interest it did not already own in
15 that entity, and we will make a filing that will update
16 the Application materials in that regard. And, what that
17 does is make the transaction easier. It is now wholly
18 owned by Con Edison affiliates. The membership interest
19 in NEL are owned by this entity that Con Edison just
20 acquired the minority interest in as well. That is what
21 will be transferred, those membership interests will be
22 transferred to NAEA in the context of this proceeding.

23 Now, the NEL project or facility in
24 Newington was fully certificated by this Committee in May

1 of 1999. During that process, as the Committee well
2 knows, all of the environmental reviews were conducted,
3 all of the environmental permits were obtained. There
4 were numerous conditions, as many of you remember, that
5 the plant has operated under. All of the land use issues
6 were dealt with in the context of that proceeding. All of
7 the necessary statutory findings with respect to the
8 capability of NEL to operate the facility, all of those
9 items have been handled in the context of the
10 certification of the facility.

11 Since construction and operation of the
12 facility, the project has operated consistent with the
13 conditions that this Committee imposed on its construction
14 and operation. And, in fact, we are very proud of both
15 the environmental and the energy record that the facility
16 has. We think it's important, because we have asked that
17 this Committee review this Application in an expedited
18 manner, and that it also grant its approval in an
19 expedited manner. And, the fact that the project has been
20 this successful we believe enables you to do that.

21 A little bit about the transaction. In
22 December, on December 10, 2007, Con Edison announced that
23 it, through Consolidated Edison Development, CED --

24 CHAIRMAN BURACK: Please proceed.

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1 MR. PFUNDSTEIN: On December 10th, Con
2 Edison announced that it had entered into purchase and
3 sale agreements to sell their ownership interest in
4 entities owning power-generating properties amounting to
5 approximately 1,706 megawatts. The NEL facility, although
6 a bit of a jewel, if you will, is still only one part of a
7 much larger transaction. NAEA is acquiring the entire
8 1,706 megawatts, including the NEL facility. NEL is one
9 of 12 sites in four states that are subject to this
10 transaction. So, albeit an important component of the
11 transaction, it is only one portion of it. The
12 transaction and sale, as you would imagine, is subject to
13 federal and state approvals and a number of conditions
14 associated with the closing. The Applicant seeks approval
15 -- or, the Co-Applicants, rather, seek approval of the
16 transfer of the membership interest in NEL of CED/SCS to
17 NAEA. That is what we are here for and that is what the
18 Application was filed for.

19 I'd like to briefly talk a little bit
20 about the Committee's scope and standard of review, and
21 then turn it over to Mr. Needleman, who will talk about
22 the buyer's capabilities and other matters in which,
23 obviously, the Committee will be very interested. The AES
24 proceeding, where you had the transfer of memberships in

1 AES, provides a good road map for this current proceeding.
2 And, in fact, in the AES transfer of membership interest
3 docket, the Committee noted that, "when the project is
4 substantially complete, that many of the siting issues
5 implicated by the original Application are moot." In its
6 order, it further stated that "when a change in ownership
7 is proposed", which is what we have here, "it is important
8 for the Committee to investigate the financial, technical
9 and managerial capability of the proposed new owner." The
10 Committee continued in its order to say "Thus, the
11 Committee's focus in the docket is on the financial,
12 technical and managerial capability of the proposed new
13 owner."

14 Here you have a very similar
15 circumstance. We're talking about the transfer of the
16 membership interest in NEL to NAEA. In the AES
17 proceeding, you had a transfer of membership interest as
18 well. The focus was on the capabilities of the buyer to
19 operate the facility in compliance with the conditions of
20 the Certificate, and we submit is the same focus and
21 review that the Committee has with this Application.

22 With that, I would ask Mr. Needleman if
23 he would describe for us the buyer's capabilities and make
24 what other points on behalf of the buyer at this time.

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1 Thank you, Mr. Chairman.

2 MR. NEEDLEMAN: Thank you, Don. Good
3 morning, everybody. As Don mentioned a moment ago, we are
4 here today essentially to make this a presentation of
5 counsel. I have with me Mr. Kosel, from AllCapital. He
6 is not one of the witnesses who prefiled testimony for us,
7 but he is here to assist me in and answer questions when
8 I'm done. He is a Senior Director at AllCapital, and a
9 former Vice President of General Operations at KeySpan,
10 where he had responsibility for overseeing I think
11 approximately 6,200 megawatts of capacity, including
12 gas-fired facilities at KeySpan. At the final hearing,
13 you will hear from our two witnesses, Stephen Daniel, who
14 is the CEO of AllCapital, and Richard Rudini, who is the
15 head of the energy practice at AllCapital.

16 What I would like to do this morning is
17 briefly introduce the buyers, and then to talk about the
18 buyers' managerial, technical and operational capability.
19 And, a moment ago Don equated this proceeding with the AES
20 proceeding, and I think he's correct. It is a very good
21 road map. I would also note that, in some respects, I
22 think the work the Committee may have here in relation to
23 that proceeding is easier for two reasons. First of all,
24 in the AES proceeding, there was a change in the operator

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1 at the plant. In this case, as you'll hear, there is no
2 change in the operator. GE has been and will remain the
3 operator at the facility. And, in addition, in the AES
4 proceeding, when the banks took over, it was unclear at
5 that time who was going to be the ultimate owner of the
6 facility. In this case, it's not unclear. NAEA will be
7 the ultimate owner of the facility. And, in fact, the
8 long-term business strategy of NAEA and its owners is to
9 buy and hold assets like this for an extended period of
10 time.

11 Let me tell you a little bit about the
12 buyers. And, I think it might be helpful if you look at
13 Exhibit B in the Application, which is an organizational
14 chart of what this will look like when the deal is done.
15 We prepared that chart just to try to simplify some of the
16 many acronyms here and try to make it as clear as we could
17 what this is going to look like. The buyer is NAEA, which
18 is North American Energy Alliance. When the transaction
19 is complete, NAEA will be the 100 percent owner of NEL.
20 And, NEL, as you know, right now is the holder of the
21 Certificate. We do plan, after the transaction is closed,
22 to change the name of "NEL" to "NAEA Newington Energy",
23 which was noted in the Application. That entity will
24 continue to hold the Certificate here.

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1 The chart provides a simple description
2 of the ownership structure of NAEA. And, as you can see
3 immediately above it, it is 100 percent owned by North
4 American Energy Alliance Holdings, LLC, and, in turn,
5 NAEA is jointly owned by Allco Finance Limited and
6 Industry Funds Management. I want to note for the record
7 that, in the notice, which the Chairman read at the
8 beginning, it described the ownership interest in the
9 proposed transferee, and those percentages were actually
10 backwards; Industry Funds Management will own
11 62.45 percent and Allco Finance Group will own
12 37.55 percent. And, that is described in the Application,
13 and I think also noted on this chart. Allco is a
14 financial services company listed on the Australian Stock
15 Exchange. IFM is an Australian investment company that is
16 owned by a series of not-for-profit pension funds in
17 Australia. Both of these entities have experience
18 investing in energy assets around the world. And, in
19 addition, the U.S. subsidiary of Allco Finance Group,
20 AllCapital U.S, has significant experience constructing
21 and operating energy facilities. And, in Exhibit C to the
22 Application, we have included the resumés of the
23 AllCapital Energy Team, and one member of that team is
24 Mr. Kosel.

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1 Let me turn now to the buyers' financial
2 capabilities. In this transaction, NAEA is being funded
3 by a combination of equity contributions from Allco and
4 IFM and a debt facility from Barclay's Bank. The equity
5 contributions coming from Allco and IFM total \$597 million
6 and the debt facility from Barclay's totals \$880 million,
7 and that comprises the \$1.477 billion total purchase price
8 for all of the assets in this deal. A portion of that
9 purchase price, \$736 million, is for the Newington
10 facility. The Barclay's funding is currently being
11 negotiated between these entities, and they are in the
12 process of working out the final loan documents right now.

13 Following the closing, Barclay's will
14 also make available to NAEA two additional credit
15 mechanisms. The first one will be a Letter of Credit in
16 the amount of approximately \$120 million. The purpose of
17 the Letter of that Credit -- Letter of Credit is to
18 provide additional financial resources. So, for example,
19 if a counterparty in a contractual transaction, such as a
20 Fuel Purchase Agreement, needs additional financial
21 assurance, then that Letter of Credit will be there to
22 support that type of deal. In addition, there will be a
23 \$30 million working capital facility also available
24 through Barclay's. The purpose of that will be to make

1 additional funds available in the event that, say, a major
2 piece of equipment were to need some type of replacement.

3 Turning now to the buyers' managerial
4 and technical capability, let me briefly summarize that.
5 NAEA will have overall responsibility for managing the
6 entire portfolio of assets that are being acquired from
7 Con Ed in this transaction, including Newington. NAEA
8 will be supported by AllCapital's Energy Team, which I
9 made reference to earlier. Day-to-day responsibility at
10 the Newington facility will remain with General Electric.
11 GE has been operating that facility, as you heard, under
12 contract since it began commercial operation. And, it is
13 the intention of NAEA to continue that arrangement as it
14 now exists. NAEA will assume the management of that
15 contract and will assume the oversight of that contract,
16 and handle it in a manner similar to how it's been handled
17 in the past.

18 In addition to what I've described so
19 far, NAEA will also acquire from Con Edison a subsidiary
20 called "CED Operating Company". CED Operating Company has
21 approximately 35 employees working at three of the other
22 plants that are being acquired in this transaction. CED
23 Operating Company performs operation and maintenance
24 services at these plants. And, CED Operating Company

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1 staff will be available, as needed, to assist with the
2 operations at Newington.

3 And, the one final point I wanted to
4 make is that NAEA will also be acquiring the CEEMI
5 facility in West Springfield, Massachusetts as part of
6 this transaction. The CEEMI facility has a staff of 33
7 people, and the CEEMI staff, together with the Con Ed --
8 with the CED Operating Company staff, will be available to
9 assist the facility. And, in fact, as I understand it,
10 both the CEEMI staff and the CED staff, together with the
11 GE staff at Newington, will have regular meetings to talk
12 about facility operations.

13 That concludes my initial presentation.
14 And, so, I think I'll stop there and give the Committee an
15 opportunity to ask any questions that it might have.
16 Thank you.

17 CHAIRMAN BURACK: Go ahead, Mr. Getz,
18 questions?

19 VICE CHAIRMAN GETZ: Yes, I just had a
20 couple of procedural questions, I don't know if this is
21 for Mr. Pfundstein or Mr. Needleman. You mentioned today,
22 and in the cover letter and in the Petition, Mr.
23 Pfundstein, that you were "seeking expedited review".
24 And, I didn't see anyplace where it defined what that

1 meant. My understanding is, counsel for the Petitioners
2 and counsel for the Committee have talked about a
3 procedural schedule that would go to hearing in late
4 April. Does that coordinate with your notion of an
5 "expedited" proceeding?

6 MR. PFUNDSTEIN: Bearing in mind that
7 the parties would like to do it today, the proposed
8 schedule that counsel has presented to you is acceptable
9 to us. We understand the reality of your Committee's
10 process. The only point I would make is that, in the
11 future, if we should learn over the next week or two weeks
12 that there are no other parties interested and there's no
13 need for some of these timelines, we might ask that it be
14 further accelerated at that point. But it's certainly
15 acceptable to us as your counsel has presented it.

16 VICE CHAIRMAN GETZ: And, one other
17 procedural question. I assume there's -- this overall
18 transaction involves three other states and ten other
19 plants. What's happening generally in Massachusetts, New
20 Jersey, and Maryland? Are those timelines -- how do they
21 comport.

22 MR. PFUNDSTEIN: Generally speaking, I
23 think we have viewed this proceeding as to be one of the
24 longest processes, and that's why we have asked that it be

1 expedited as much as possible. For instance, I think the
2 antitrust clearance has already been received. I don't
3 know specifically about the other approvals. But, based
4 upon the conference calls that I have attended, in terms
5 of how the process is going, this one seems to have the
6 longest tail.

7 VICE CHAIRMAN GETZ: Well, this does
8 seem to be, if I'm reading this correctly, it's half the
9 price and a third of the megawatts involved in the entire
10 transaction. Is that an accurate characterization?

11 MR. PFUNDSTEIN: Yes.

12 CHAIRMAN BURACK: Are there other
13 questions from members of the Committee for counsel for
14 the parties? Mr. Harrington.

15 MR. HARRINGTON: Yes, just a little bit
16 more on this, go back to your Appendix B chart, I'm just
17 trying to follow this a little bit better here. You say
18 that there's a "contract with General Electric". Is that
19 an extension of the existing one or are you signing a
20 brand-new one with new terms and conditions?

21 MR. KOSEL: It will be a continuation of
22 the existing contract.

23 MR. HARRINGTON: So, they actually
24 perform the day-to-day operation of the plant. And, they

1 report to -- they're going to report to which block?

2 MR. NEEDLEMAN: When the deal is closed,
3 assuming all of the approvals are secured, Con Ed will
4 report to NAEA.

5 MR. PFUNDSTEIN: No, GE.

6 MR. NEEDLEMAN: I'm sorry, GE will
7 report to NAEA.

8 MR. HARRINGTON: Okay. And, those are
9 people that will make the management decisions on actually
10 running the plant, as far as, you know, budget approval,
11 personnel, etcetera, etcetera, operating stuff?

12 MR. KOSEL: Right. The day-to-day
13 operation will be done by General Electric, and the
14 oversight will come from the NAEA organization. And, in
15 the NAEA organization, the Asset Managers will reside and
16 provide the overall management of the facility. But the
17 day-to-day operation will continue to be done by General
18 Electric.

19 MR. HARRINGTON: And, who will arrange
20 for the purchase fuel contracts that will be done?

21 MR. KOSEL: We are in the process of
22 negotiating a tolling arrangement with a major provider.

23 MR. HARRINGTON: I'm sorry, I'm not
24 familiar with that term, "tolling"?

1 MR. KOSEL: "Tolling" is where the
2 provider will supply the fuel, and essentially Newington
3 will convert it to electricity. So, they will provide the
4 fuel -- We're in the final stages of negotiating a tolling
5 agreement with an energy provider, major energy provider.
6 A "tolling arrangement" is a arrangement by which the
7 provider will supply the fuel. Newington will convert it
8 to electricity. And, then, the electricity will be
9 marketed by the same provider. So, essentially, we just
10 convert it into energy, and they will provide the fuel and
11 sell the energy.

12 MR. HARRINGTON: And that contract is
13 negotiated through which box again?

14 MR. KOSEL: NAEA.

15 MR. HARRINGTON: NAEA. Thank you.

16 CHAIRMAN BURACK: Are there other
17 questions from the members of the Committee? Ms.
18 Ignatius.

19 DIR. IGNATIUS: Thank you. The
20 Application and the testimony don't describe some of the
21 details that we've just heard about, and I understand this
22 is something still developing. I guess, if there's a
23 deadline for submission of later details to get into the
24 record, that would be helpful, so that there's not a

1 constantly moving target, and recognizing that not
2 everything is resolved. It would be, I think, prudent to
3 have a date for submission of things like the fuel
4 contract you were just describing, the two Letters of
5 Credit from Barclay's that I don't think are in the
6 testimony or in the Application, I didn't see them, if
7 they are, but Mr. Needleman just described, and how those
8 will be used. I think there's preference to other, a
9 discussion with some personnel on whether or not they will
10 be retained, and, as of the time of the filing at least,
11 hadn't yet been resolved. And, so, as this tightens up,
12 maybe there could be a submission to the file for, whether
13 it's in the form of testimony or submission of the
14 documents themselves, I would find helpful.

15 Another question I had is whether or
16 not, when you have all of the pieces in order, do you
17 anticipate a reduction in force at the plant, the same, or
18 an expansion of the numbers of people at the plant?

19 MR. KOSEL: At this time, we would
20 consider that the existing facility will be operated and
21 maintained with the same complement that exists today.

22 DIR. IGNATIUS: And, I guess, if that's
23 the case, any further detail on, when you say that "staff
24 will be available at these other plants" and "other teams

1 within the larger organization", what does that really
2 mean? I mean, "available as needed" for what? For what
3 sorts of things would you turn to them? How would you
4 have any -- do you have any guarantees that they will
5 actually be available? I mean, they've got, I assume,
6 other jobs to do all of the time as well. So, if there's
7 any detail worked out on what that means to say "they're
8 available as needed", I think that would be helpful.

9 I also had a question on whether there
10 have been any issues with the Town of Newington, any state
11 regulatory bodies, any federal authorities, during the
12 operation of the plant? I understand it's been well run
13 and there have been no findings of any problems. But are
14 there any -- are there any issues that have risen to the
15 level of actually actions taken against it that we should
16 know about and consider? And, either today, or in this
17 supplemental time would be helpful to have details on that
18 if there is anything that we should be evaluating. Maybe
19 right now, if you know --

20 MR. MADIA: I'm not aware of anything.
21 The asset management and oversight on the General Electric
22 day-to-day operations has resided since inception with my
23 group. We've been a good corporate citizen and funded
24 charity events in the area, supported the construction of

1 -- supported the funding of the Industrial Corridor Road,
2 which is now called "Shattuck Way" in Newington. So, the
3 project has been, again, a good corporate citizen and a
4 good neighbor in the community. We have not had any
5 violations or penalties or any kind. The facility has an
6 excellent environmental track record. So, I will go back,
7 but I do not know of any issue with any government agency,
8 regulatory body, or the Town.

9 DIR. IGNATIUS: Thank you.

10 MR. PFUNDSTEIN: I could simply add to
11 that, that I spoke with Tom Morgan, who is the Town
12 Planner in Newington. He was the individual that was
13 involved with the initial certification of the project, to
14 essentially see how that was going. And, obviously, he's
15 not here, but I will represent to you that he told me that
16 he's actually enjoyed very much having Con Ed in the
17 Newington facility.

18 DIR. IGNATIUS: Thank you.

19 CHAIRMAN BURACK: Mr. Stewart.

20 DIR. STEWART: In terms of the -- as we
21 get into the hearing process, I think it would probably be
22 useful to have a summary of some form of the environmental
23 compliance history of the facility itself. And, I, you
24 know, off the top of my head, there's an NPDES permit and

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1 an air permit at least. And, it would be useful to know
2 and put on the record the history, which presumably is
3 pretty good. And, also, the acquiring company, it would
4 be good to have some articulation of the environmental
5 compliance history of the Company that's acquiring the
6 facility also.

7 CHAIRMAN BURACK: If I may, I think what
8 Mr. Stewart is suggesting is very helpful. When we're
9 talking about the environmental history of the acquiring
10 company, I think we, obviously, need to be looking to
11 Allco Finance Group and Industry Funds Management or
12 whatever companies they have owned and managed over time,
13 so we know what their track record is in owning other
14 facilities. I think it would also be helpful if you could
15 provide to us, for this particular facility in Newington,
16 a list of all of the permits and approvals currently held
17 by the facility, including confirmation that, for any of
18 them, if there are requirements to notify the permitting
19 entity of a change in control of the company, that we've
20 identified what those notices are and that, in fact, they
21 been given or you have a schedule on which you were giving
22 them, and just confirm that there isn't some additional
23 permitting approvals that need to occur in order to allow
24 this transfer of ownership to occur. Mr. Pfundstein.

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1 MR. PFUNDSTEIN: Mr. Chairman, we can
2 file that complete package shortly.

3 CHAIRMAN BURACK: That will be very
4 helpful. Are there other? Mr. Harrington.

5 MR. HARRINGTON: Yes, just a quick
6 follow-up. When do you anticipate signing the contract
7 with GE for the operation and will you be submitting a
8 copy of that to the Committee?

9 MR. KOSEL: At closing.

10 MR. MADIA: The contract is held by NEL.
11 So, the Co-Applicant is acquiring the --

12 (Multiple parties speaking at the same
13 time.)

14 MR. HARRINGTON: Go ahead. Excuse me.

15 MR. MADIA: The contract itself with
16 General Electric is held by NEL. So, we would envision
17 that the contract stays with that entity. There would be
18 no changes. And, the O&M contract has been filed with the
19 Application.

20 CHAIRMAN BURACK: Other questions?

21 (No verbal response)

22 CHAIRMAN BURACK: If I may then, and I
23 will portray that I have not yet had a chance to read the
24 entire purchase and sale agreement, but I think it would

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1 also be helpful for the Committee to understand, if it's
2 not already set out in here, and if it is, if you could
3 point out to us where it is set out, an understanding of
4 how the sales price for this facility or the cost that's
5 being allocated to this facility is, in fact, allocated
6 either to the value of the real estate or to whatever
7 other -- whatever other aspects of the values associated
8 with the facility -- with the overall facility and site
9 are being set out. I trust you understand what I mean,
10 what I'm speaking to?

11 MR. NEEDLEMAN: We do, and that detail
12 isn't in there and we'll provide it.

13 CHAIRMAN BURACK: Great. Thank you.
14 Other questions?

15 (No verbal response)

16 CHAIRMAN BURACK: Okay. What I'd like
17 to do now then is to see if there are any questions or
18 comments from the public or potential intervenors in this
19 proceeding?

20 (No verbal response)

21 CHAIRMAN BURACK: Any members of the
22 public or potential intervenors who would like to comment
23 at this time?

24 (No verbal response)

1 CHAIRMAN BURACK: Okay. Very good.
2 Seeing none, I think we should turn now to a deliberation
3 on our procedural schedule. As a consequence of the
4 requests that have been made by various members of the
5 Committee here for additional information to be submitted,
6 I think it would be constructive if we could include in
7 the proposed timeline that we have, and maybe I will just
8 read this into the record, and I apologize, but there's no
9 other way to do this than for me to read this. And, then,
10 let's talk about a way that we could perhaps build in a
11 deadline prior to -- at least prior to probably either the
12 Petitions for Intervention being due or at least certainly
13 before a prehearing conference for submittals.

14 All right. We will go ahead and put
15 into the record for this hearing as an exhibit the
16 proposed timeline, which I believe has been circulated to
17 all of the members of the Committee, as well as the
18 Co-Applicants and their counsel and members of the public.
19 And, Mr. Iacopino will make additional copies available
20 here to any who do not yet have one. So, we are looking
21 at a schedule, obviously, commencing with our Initial
22 Public Notice and Order issued January 29th, and today's
23 public meeting here on February 11th. And, proceeding to
24 a deadline for publication of February 22nd; Petitions for
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1 Intervention due March 7th; objections by March 12th;
2 prehearing conference with the Committee's Counsel on the
3 13th of March; issuance of a Notice of Procedural Schedule
4 and Final Hearing on March 19; deadline for publication of
5 that schedule and Notice of a Final Hearing on the Merits
6 on the 28th of March; discovery completion deadline, April
7 11; deadline for Intervenors to file pre-filed testimony
8 by the 18th of April; Applicants -- Co-Applicants to file
9 their supplemental pre-filed testimony by the 22nd of
10 April; and final hearing and deliberative session on the
11 28th of April.

12 And, I think what we need to talk about
13 doing is inserting in here probably, and counsel and
14 Co-Applicants, we, obviously, seek your input on this,
15 ideally, by the end of February, submittal of the
16 additional information that we've described here in
17 today's discussion. Is that -- Is the end of February
18 reasonable? And, is it possible that some of the material
19 might be submitted sooner? Obviously, the sooner the
20 information is submitted, the more helpful it is to the
21 Committee and to potential intervenors as well, so that
22 everybody has a better understanding of what the issues
23 are.

24 MR. PFUNDSTEIN: Certainly NEL can meet

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1 that deadline, I think, easily.

2 MR. NEEDLEMAN: And, Howard and I were
3 just talking, and I think we can as well. So, if we want
4 to just say February 29th, I think that would work.

5 CHAIRMAN BURACK: Okay. Very good. Is
6 that acceptable, members of the Committee? Okay. So, we
7 will set February 29 as a deadline for submittal of the
8 additional information requested at today's public hearing
9 -- I should say at today's -- yes, today's hearing.
10 Anything else? Ms. Ignatius?

11 DIR. IGNATIUS: Mr. Chairman, are we
12 required by the statute to have a public hearing in
13 Newington, in the county? I mean, the statute, I just
14 looked at 162-H:6, IV, says "Within 30 days after
15 acceptance of the Application, the Committee shall hold at
16 least one public hearing in each county in which the
17 proposed facility is to be located." There's no -- I
18 wondered if there was some out for if it's only a transfer
19 of ownership or something, you don't need to. I think
20 it's more designed for the new construction type thing,
21 but it doesn't really say that.

22 MR. IACOPINO: I think --

23 CHAIRMAN BURACK: Mr. Iacopino.

24 MR. IACOPINO: I think this portion of

1 the statute that Ms. Ignatius refers to is when there is
2 an application filed. We had public informational
3 meetings in Rockingham County back at the time when NEL
4 first proposed their Application. I don't believe that it
5 is necessary. Of course, if the Committee wishes to have
6 their meetings there, they certainly can. We can get that
7 arranged. But I don't think it's necessary. I don't
8 believe that we did that when we had the AES transfers.
9 All of the hearings were held right here in Concord.

10 CHAIRMAN BURACK: Mr. Gets.

11 VICE CHAIRMAN GETZ: So, I guess, Mike,
12 what you're saying is the difference between an
13 Application for Certificate in the first instance, and
14 perhaps this really should have been called a "Petition
15 for Transfer of a Certificate", rather than an
16 "Application"?

17 MR. IACOPINO: Well, they call it an
18 "Application for Transfer", but it's not an "Application
19 for a Certificate", and that is the portion of the
20 statute, which is referenced by Ms. Ignatius, is for an
21 Application for Certificate. There's already been a
22 certificate issued in this particular case, and what we're
23 determining is whether or not to transfer -- the ownership
24 of the membership interests in that certificate can be

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1 transferred.

2 CHAIRMAN BURACK: Ms. Ignatius, are you

3 --

4 DIR. IGNATIUS: No, that's fine. I
5 think that distinction, I guess, makes sense. And, I
6 think you're right, we didn't do it with AES.

7 MR. IACOPINO: Remember, at the time of
8 the Initial Application, there's a whole lot more going
9 into the pot, a whole lot of environmental issues,
10 planning issues, you know, local issues, and that's why I
11 believe the Legislature has us make sure that we have a
12 hearing in each county where the facility is going to
13 exist, when there's an Application for the original
14 certificate.

15 CHAIRMAN BURACK: Thank you. Other
16 questions and comments on this matter? Mr. Harrington.

17 MR. HARRINGTON: This is a follow-up
18 going back to that, I don't know if it's just my copy, but
19 looking at the Operation and Maintenance Agreement, a
20 couple of questions, I guess. This is a copy of the
21 existing one that's in the books now?

22 MR. PFUNDSTEIN: Yes.

23 CHAIRMAN BURACK: Could you state what
24 exhibit you're looking so I can turn to it?

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1 MR. HARRINGTON: Exhibit D.

2 CHAIRMAN BURACK: Exhibit D. Thank you.

3 MR. HARRINGTON: And, the first four or
4 five pages, and then there's a signature page, then it
5 starts out with a page listed as "Appendix A-8", and I'm
6 wondering what happened to the rest, A-1 through 7?

7 MR. PFUNDSTEIN: Actually, the
8 Application, we attached what we believe to be were the
9 relevant sections, --

10 MR. HARRINGTON: Okay.

11 MR. PFUNDSTEIN: -- because this is what
12 described the responsibilities of GE, basically. Now, we
13 can file the entire document, I don't see any reason why
14 we can't. The reason we didn't, it was voluminous.

15 MR. HARRINGTON: No, that's fine. I
16 just wanted to know -- make sure I wasn't missing
17 something. And, what you're saying then is that this
18 would be the basis for a new document that would be not
19 exactly the same, because it would be with the new
20 company?

21 MR. PFUNDSTEIN: I guess I'd let the
22 buyer -- it would be the same.

23 MR. KOSEL: The same document.

24 MR. HARRINGTON: It's the same document

1 itself. Okay. Thank you.

2 CHAIRMAN BURACK: Are there other
3 questions?

4 (No verbal response)

5 CHAIRMAN BURACK: Is there further
6 discussion? Is there further discussion of the draft
7 schedule? Mr. Below.

8 CMSR. BELOW: The only question I might
9 have is, if per chance there's no intervenors, is there's
10 not any -- there's none indicated today, perhaps, when it
11 gets to the point of the prehearing conference on March
12 13th, and the March 19th, the Chair issuing an Order of
13 Notice of Procedural Schedule and Final Hearing, maybe at
14 that point the Chair could have some discretion to
15 accelerate the final hearing, if there's no Intervenor
16 and the intervening steps aren't necessary.

17 MR. PFUNDSTEIN: Great.

18 CHAIRMAN BURACK: That's, I think, an
19 excellent suggestion, and I think that's the way that, I'm
20 seeing a lot of nodding heads, and I think that's the way
21 we will proceed. Certainly, if we can move this along
22 more quickly than what's set out here, based on a lack of
23 Intervenor or other issues arising, we will certainly
24 make every effort to do that.

1 MR. PFUNDSTEIN: Thank you,
2 Mr. Chairman.

3 MR. NEEDLEMAN: Thank you.

4 CHAIRMAN BURACK: Okay. I think, then,
5 what I'd like to do is see if there is a motion to adopt
6 this proposed timeline, as we have modified it?

7 DIR. SCOTT: So moved.

8 (Commissioner Bald indicating.)

9 CHAIRMAN BURACK: Motion by Commissioner
10 Bald. Is there a second?

11 MR. HARRINGTON: Second.

12 CHAIRMAN BURACK: Second by
13 Mr. Harrington. Any further discussion?

14 (No verbal response)

15 CHAIRMAN BURACK: Hearing none, all in
16 favor?

17 (Multiple members indicating "aye".)

18 CHAIRMAN BURACK: Opposed?

19 (No verbal response)

20 CHAIRMAN BURACK: Abstentions?

21 (No verbal response)

22 CHAIRMAN BURACK: None. Thank you.

23 Okay, we've adopted a timeline. I would also entertain a
24 motion to ratify the retention of the law firm of --

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1 Michael Iacopino's law firm to serve as legal counsel to
2 the Site Evaluation Committee for purposes of this
3 proceeding?

4 DIR. STEWART: So moved.

5 CHAIRMAN BURACK: Motion from Mr.
6 Stewart.

7 CMSR. BALD: Second.

8 CHAIRMAN BURACK: Second from Mr. Bald.

9 Any discussion?

10 (No verbal response)

11 CHAIRMAN BURACK: All in favor?

12 (Multiple members indicating "aye".)

13 CHAIRMAN BURACK: Opposed?

14 (No verbal response)

15 CHAIRMAN BURACK: Abstentions?

16 (No verbal response)

17 CHAIRMAN BURACK: Thank you. Motion

18 carries. Okay. Are there any other matters that we
19 should address with respect to this, this proceeding at
20 this time? Mr. Getz.

21 VICE CHAIRMAN GETZ: Well, perhaps one
22 more motion, that may be a matter of "belts and
23 suspenders". But I would move, to the extent that it's
24 necessary, that we designate the Chairman, Commissioner

1 Burack, as presiding officer, and that he be designated to
2 resolve any procedural matters that arise during the
3 conduct of this proceeding, and a single order can be
4 issued by him under that authority. So moved. Is there a
5 second?

6 DIR. CLARK: Second.

7 CHAIRMAN BURACK: Second by Director
8 Clark. Any discussion?

9 (No verbal response)

10 CHAIRMAN BURACK: Hearing none, all in
11 favor?

12 (Multiple members indicating "aye".)

13 CHAIRMAN BURACK: Opposed?

14 (No verbal response)

15 CHAIRMAN BURACK: Abstentions?

16 (No verbal response)

17 CHAIRMAN BURACK: Thank you. Motion
18 carries. Okay. Anything else with respect to this
19 matter?

20 (No verbal response)

21 CHAIRMAN BURACK: If not, gentlemen,
22 thank you very much for being with us here today to begin
23 this matter. We look forward to working with you as we
24 see this matter through. So, thank you.

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1 MR. IACOPINO: Mr. Chairman, I'll have
2 an order for you to sign and for the Applicants to publish
3 probably by the end of the day.

4 CHAIRMAN BURACK: Thank you very much.
5 We will seek to get that out as expeditiously as we can.
6 Okay. This concludes the first portion of today's public
7 hearing.

8 Okay. We will now proceed to Agenda
9 Item Number 2, which is Docket Number 2008-02,
10 promulgation of organizational and procedural rules.
11 Today is a public hearing regarding the promulgation of
12 organizational rules and procedural rules for the Site
13 Evaluation Committee. Formal notice of hearing on these
14 rules was originally published in the New Hampshire
15 Rulemaking Register on January 18, 2008, Volume XXVIII,
16 Number 3, at Pages 1 and 3. Notice was also published in
17 three different newspapers in connection with the notice
18 on the Newington matter that we just heard, including in
19 the Union Leader, on February 1st of this year; Foster's
20 Daily Democrat, on January 31 of this year; and Portsmouth
21 Herald, on February 4 of this year.

22 So, what I'd like to do now is turn the
23 discussion over to Vice Chairman Getz, who will present
24 the proposed rules, and thereafter we will take public

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1 comment, if any, on these proposed rules. Vice Chairman.

2 VICE CHAIRMAN GETZ: Thank you, Mr.
3 Chairman. Just note for the record that the Committee
4 voted on December 13, 2007, to adopt Initial Proposals of
5 organizational and procedural rules. That the hearing
6 this morning is held pursuant to RSA 541-A:11 under the
7 Administrative Procedures Act for the purposes of taking
8 public comments on the proposed rules, and also note for
9 the record that a quorum of the Committee is required for
10 consideration of the rules, and that, in fact, a quorum is
11 present today.

12 I think the Chairman has already noted
13 the various means of publication. And, I think we've had
14 a couple of instances in the past where we've provided
15 general background on these rules that are filed in
16 compliance with Senate Bill 140 from last year to adopt
17 new procedural rules. So, at this point, would turn to
18 members of the public that have signed up to make public
19 comment. And, I also note that the deadline for written
20 comments is February 21.

21 So, Mr. Cunningham, on behalf of the
22 Sierra Club, if you could make your public comments
23 please, sir.

24 MR. CUNNINGHAM: Mr. Chairman, thank you

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1 very much, members of the Committee. I have written
2 suggestions to make to the rules today, I don't have
3 enough copies, unfortunately. I think there are just ten
4 there.

5 MS. AMIDON: I'll make additional
6 copies, so that all the members of the Committee have it.

7 MR. IACOPINO: It looks like there's
8 about nine there.

9 MR. CUNNINGHAM: The testimony I want to
10 offer, perhaps we can wait till everybody has a copy of
11 the suggestions that I've made on behalf of the New
12 Hampshire Sierra Club, but the testimony I have to offer
13 is patterned after the testimony that I gave before the
14 Science, Technology & Energy Committee, in support of
15 House Bill 1562. I know Commissioner Getz attended those
16 hearings, and the bill was offered by Gene Andersen of
17 Lebanon. And, the bill is still pending before Science,
18 Technology & Energy Committee. At that hearing,
19 Commissioner Getz offered testimony on the process this
20 Committee engaged in in the Lempster process, and his
21 testimony was persuasive and credible. And, I want to
22 compliment the Committee on doing such an outstanding job
23 in that process, and hearing and listening to the
24 environmental concerns that were raised and the community

1 concerns that were raised during that process. It was a
2 good job, an outstanding job, and you're to be
3 complimented.

4 However, as per the testimony that I
5 offered on House Bill 1562, I think this -- the rules are
6 deficient in a number of respects. When you have my
7 suggestions in front of you, I've offered some suggestions
8 that have both procedural due process import and
9 environmental import. In Part 201.04, the rules simply
10 call for notifying people who may have residences or
11 buildings on impacted properties. The Sierra Club
12 suggestion is that every property owner, whether there's a
13 building there or not, should be notified in writing that
14 a new project is pending and may affect or impact their
15 property. In Part 201.04(g)(3), I substitute this
16 language, and I think this is critical. The notice should
17 include a "description of all adverse impacts on the
18 environment that may be caused by the proposed facility,
19 including impacts to the interconnected broader
20 environment."

21 Now, what this means is, and the severe
22 limitations, for example, in the wetlands permitting
23 process, confine examination of the wetlands impact to the
24 dredge and fill area itself. So, what this notice should

1 require is a broader look at the environmental impacts of
2 a new siting in energy projects.

3 This I certainly believe is part of the
4 constitutional procedural due process that should be
5 required in anything that is going to impact or adversely
6 affect people's property. And, certainly, environmental
7 impacts beyond the narrow confines of the project itself,
8 or the narrow confines, for example, of the wetlands,
9 should be examined and considered by this Committee.

10 If the Committee would look at, and I'm
11 not just assuming this or making this up, if the Committee
12 would look at the "purpose" clause of 162-H:1, you'll find
13 that references to the environment, and at least eight
14 times in the "purpose" clause, that it is part of the
15 Committee's responsibility to examine the environmental
16 impacts of projects. At the bottom of 162-H:1, and in II,
17 it says this: That there should be provided "a full and
18 timely consideration of the environmental consequences,
19 all entities planning to construct facilities in the state
20 should be required to provide full and complete disclosure
21 of such plans." So, what we are asking is that, not only
22 that narrow impacts of the project be considered, but the
23 broader impacts of the interconnected environment be
24 considered as well, and not be limited by just the narrow,

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1 narrow confines of the project locations.

2 If you look at my suggestions on Part
3 201.04(g)(4), I would make the same argument. That an
4 environmental assessment has to be conducted in
5 conjunction with examination of these projects, and,
6 again, not just in the narrow confines of the project.
7 And, that there should be a burden of proof. And, I know
8 Commissioner Getz and I somewhat disagreed on this
9 language during the Committee hearings on HB 1562, but our
10 proposed language is that "The environmental assessment
11 must demonstrate a reasonable certainty that the proposed
12 facility will not cause significant adverse environmental
13 impacts, or, if the project is expected to cause
14 significant environmental impacts, a detailed description
15 of each such impact and, importantly, a description of
16 alternatives that will minimize such impacts, including
17 the alternative of no action and any significant
18 environmental impacts such alternatives may have."

19 Now, the idea of examination of
20 alternatives is to look at "are there ways to build this
21 or construct this project that will be less
22 environmentally damaging?" And, I would suggest to the
23 Committee once again that this is -- the support for this
24 rules language is found in the "purpose" clause of

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1 162-H:10, where the Committee has the responsibility to
2 carefully examine the environmental impacts of the
3 project.

4 Finally, and one of the things that I
5 think is most deficient, in terms of the examination and
6 responsibility of this Committee, is the body of people to
7 challenge the siting decisions. If the Committee may
8 recall, if, for example, if a landowner, who's losing his
9 alfalfa field, a landowner who's losing his timberland, a
10 landowner who's losing his view, a landowner who is losing
11 his pond, unless he has a hundred of his best friends sign
12 up with him, he can't come to the Siting Committee and be
13 heard, as a matter of right, unless a hundred people sign
14 up to support him. That's totally inappropriate. I find
15 that and I would subject to you that's totally
16 inappropriate from an environmental standpoint, it's
17 totally inappropriate from a standpoint of property
18 rights. And, I would suggest to you very strongly that
19 it's totally inappropriate from the aspect of procedural
20 due process. If you or I are impacted by these siting
21 decisions, we should have a right to come in and at least
22 challenge that decision, if we are adversely affected by
23 that decision, and not have to be bound and confined to
24 finding a hundred people or the unanimous tenor of a board

1 of selectmen to come in and challenge.

2 Now, I know that this Committee can take
3 cognizance of complaints by landowners or property owners
4 that are impacted by these siting decisions. That's not
5 enough. My suggestion to the Committee is that the rules
6 should provide that any person adversely affected by a
7 siting decision shall have the right to come in and be
8 heard as a matter of right. That's not to say that you'll
9 find that the siting decision should be changed or will be
10 changed. But, I think, as a matter of right, that person,
11 who is injured or adversely affected, before his property
12 is taken by eminent domain should have the absolute right
13 to come and challenge the decision.

14 I just cannot understand how legislation
15 of this nature can be so prohibitive of individual
16 property rights in this state, and notwithstanding the
17 consequences to the environment. I thank you very much
18 for listening to my comments. And, I'd certainly be
19 willing to take questions.

20 CHAIRMAN BURACK: Thank you, Mr.
21 Cunningham. Susan Geiger, from the law firm of Orr &
22 Reno. Ms. Geiger.

23 MS. GEIGER: Yes. Good morning,
24 Chairman Burack and members of the Committee. I'm Susan

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1 Geiger, from the law firm of Orr & Reno. And, I'm here
2 today representing Iberdrola Renewable Energies U.S.A. We
3 appreciate the opportunity to provide these comments to
4 the Committee, and we commend the Committee for its work
5 on this initial draft, which we believe will greatly
6 assist parties in drafting applications and in
7 participating in proceedings before the Committee.

8 We have just a couple of suggestions for
9 the Committee's consideration. They're based upon our
10 experience in working with the Department of Justice's 800
11 rules and upon practice before the Committee. And, we
12 think these suggestions will promote efficiency and
13 fairness.

14 The first suggestion that we have is
15 that Draft Rule 202.06(c) should require service by
16 e-mail, unless a party or person listed on the service
17 list has indicated an inability to receive service by
18 e-mail. This is similar to the PUC's Rule 203.11(a).
19 Other rules in the Draft Rules that the Committee has
20 circulated here contemplate the use of e-mail for
21 communications relating to the SEC process. For example,
22 proposed Rule 201.01(a) requires the Application to be
23 filed in electronic format, and 202.04(d)(3) requires
24 attorneys and other persons appearing in a representative

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1 capacity to provide their e-mail address when filing an
2 appearance.

3 The reason that we make this suggestion
4 is that it will eliminate the time and expense associated
5 with making and mailing hard copies to multiple parties
6 and other interested persons listed on the service list.
7 In addition, it will also avoid time delays that result in
8 communicating via the United States Mail. From personal
9 experience, for example, in the past, written
10 communications from the Committee, for example, have taken
11 up to several days to reach communicants in downtown
12 Concord. So, when you have a short timeframe, for
13 example, to respond to either an order of the Committee or
14 a motion that's filed by another party, it's most helpful
15 to just have them served by e-mail, so that the process
16 can be a little bit more efficient and timely.

17 The other suggestion that we have, one
18 of the other suggestions is that we add a provision to
19 proposed Rule 202.21, which requires that, if members of
20 the public file written statements and other written
21 material with the Committee, subcommittee or presiding
22 officer, we believe that they should also provide copies
23 of such filings to the Applicant, Counsel for the Public,
24 and any other persons or parties listed on the service

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1 list prior to the close of the record. The reason for
2 this request is fundamental fairness. If public
3 statements and public comments are going to be filed with
4 the Committee, we think it's only fair that all parties
5 should receive copies of them. You know, currently,
6 member of the public can file comments with the Committee.
7 And, if the Committee doesn't take it upon itself to
8 inform everyone on the service list, the Applicant and
9 other parties have no way of knowing what's been put into
10 the record, you know, unless they make a constant check of
11 it. So, we think that it's only fair that, if members of
12 the public want to submit written comments, especially
13 after the hearing is closed, I think, if the hearing is
14 going on, and members of the public show up and give oral
15 comments, and then follow them up with written
16 proceedings, then all of the interested parties will be
17 there and will know about them. The problem arises is, if
18 public comments, especially written comments and materials
19 are submitted to the Committee after the close of the oral
20 hearings, parties, such as the Applicant and Counsel for
21 the Public don't know about them, and, therefore, would
22 not be given an opportunity necessarily to follow up with
23 any rebuttal or any other communications or information
24 that they feel would be relevant and appropriate.

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1 And, lastly, another recommendation that
2 we have is based upon a rule that the PUC has, and it's
3 PUC Rule 203.28, which provides that "The Commission shall
4 take a view or conduct an inspection of any property which
5 is the subject of a hearing before the Commission, if
6 requested by a party, on its own motion, if the Commission
7 shall have determined that the view or inspection will
8 assist the Commission in reaching a determination in the
9 hearing." And, I don't believe anybody has ever
10 challenged the Site Evaluation Committee's authority to
11 take a view. This has happened in the past, and I think
12 that it's very helpful to all interested parties. So, it
13 may not be absolutely critical or necessary to include
14 this in the rules. But the PUC has a rule such as this
15 one, and I mention it only because I think it might be
16 helpful in making sure that the Committee's authority is
17 reflected in its rules, and that parties who think that
18 views would be helpful could make a request for that under
19 the rules.

20 Again, we thank you for the opportunity
21 to make these comments. I think the only thing I would
22 add, and I wasn't prepared to do this until I heard
23 Mr. Cunningham's comments, is just remind the Committee
24 that, under 541, RSA 541, any party who is aggrieved by

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1 the Committee's decision, is directly impacted by it, can
2 move for a rehearing. So, there is an opportunity for any
3 interested party, who is directly aggrieved, to file for a
4 rehearing. And, I don't think that that needs to be put
5 in the Committee's rules.

6 Thank you. I'd be happy to answer any
7 questions, if you have them.

8 VICE CHAIRMAN GETZ: Thank you.

9 Mr. Cunningham and Ms. Geiger are the only members of the
10 public who have signed up to make comments. Turn to the
11 Committee, if there's questions or comments from the
12 Committee? Commissioner Below.

13 CMSR. BELOW: I have a comment and a
14 suggestion for something to add to the rules that I'd just
15 like to make publicly. Under Site 201.03, "Format of
16 Application", I suggest that, after (a), there be a new
17 (b) and (c), and the other ones be renumbered. (b) could
18 read something like this: "Double-sided printing or
19 coping of applications is permitted and encouraged,
20 although not required." And (c): "An electronic version
21 of the application shall be provided in PDF, Portable
22 Document File, or Word format. If the electronic version
23 of the application is greater than five megabytes in size,
24 it should be submitted as multiple files, each five

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1 megabytes or smaller in size."

2 And, then, a similar provision could be
3 added under 202.05 as (3) and (4), replacing the word
4 "application" for "document" or "each document". And,
5 just speaking to that, recently, through the Governor's
6 last meeting with agency heads, there was a memo that I
7 think DES helped write, and it came from the Energy
8 Coordinator, encouraging agencies to go to double-sided
9 copying because of the energy and resources that that
10 saves. And, a lot of times people filing don't know
11 that's allowed or encouraged. And, if we say that, I
12 think that would reduce the amount of paper we have to
13 carry around to these hearings. And, obviously, because
14 we say we're going to post the application on the Web, it
15 would really help if the applicant submitted it in
16 electronic format, instead of having us have to scan it.
17 And, the idea about a size limit is that some people have
18 a hard time downloading, you know, 20-megabyte files. So,
19 if it's in pieces, people can download it if they want to
20 view it on their own computer or open it. So, those are a
21 couple of thoughts.

22 VICE CHAIRMAN GETZ: Anyone else?

23 Mr. Harrington.

24 MR. HARRINGTON: Yes, I had one question

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1 and one comment. A question for the gentleman from the
2 Sierra Club. Your second and third comments or changes,
3 to 201.04(g)(3) and 201.04(g)(4), I just want to make this
4 clear. You're saying the statutory basis for those
5 comments is found in the "Declaration of Purpose" in RSA
6 162-H:1?

7 MR. CUNNINGHAM: That's our position,
8 yes.

9 MR. HARRINGTON: Okay. Thank you. I
10 had a separate comment on 201.04, this is under
11 Application of Certificate of Site and Facility, (e)(2),
12 which presently says "Capacity in megawatts, as designed
13 and intended for operation". I think that's a rather
14 ambiguous term and probably needs to be clarified.
15 Because, in the example of a wind project, it could be
16 100 megawatts could be its design, what it's intended
17 operation is not clear, because it's going to be all over
18 the place. Some days it may be 100, some days may be
19 zero, some days may be 20. So, I just think we should --
20 let me come up with a clarification to that section to
21 make it a little bit more clear as to what capacity we're
22 actually requesting people submit. And, I'll try to come
23 up with something and submit it. And, that was all I had.

24 VICE CHAIRMAN GETZ: Thank you. Anyone

1 else? Ms. Ignatius.

2 DIR. IGNATIUS: Thank you. I just want
3 to make a comment on the issue of affected landowners, and
4 make sure that I'm understanding Mr. Cunningham's
5 comments. Under the current structure, if the locality
6 does all of the permitting, and it doesn't come before the
7 Site Evaluation Committee, there's an appeal process
8 through the normal planning and zoning standards. And,
9 so, anyone who's affected can participate in that
10 proceeding and can appeal that determination, without any
11 resort to signatures and petitions to the SEC. If the
12 case comes before the SEC, that aggrieved landowner who
13 feels they're affected by it can intervene and can appeal
14 any determination if they find it adverse. So, I guess
15 I'm not understanding the notion that you have to have
16 signatures and a petition for a landowner who feels
17 aggrieved by the petition, in order to be before -- to
18 have some rights on the land.

19 And, the final comment, about eminent
20 domain, this is not a proceeding, this is not an entity
21 that makes determinations as to eminent domain. That's
22 yet another process, with another set of rules for
23 participation and appeal, if it's -- if the person feels
24 they disagree with the determination.

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1 MR. CUNNINGHAM: My purpose, with
2 respect to eminent domain is, once the Site Evaluation
3 Committee decides that the site is appropriate under the
4 statute, then that decision is -- renders the taking of
5 that land a public purpose. So, the landowner, at that
6 juncture, has no basis to challenge that location in any
7 other proceeding. So, once the jurisdiction of this
8 Committee is invoked and a decision is made by this
9 Committee to take that man's land or farm or that business
10 owner's building, that he has no other remedy other than
11 eminent domain. Eminent domain does not permit him to
12 challenge whether or not it's a public purpose. That
13 decision is made prior to the eminent domain case itself.
14 So, that's our position on that.

15 The literal language of the statute
16 provides that there must be 100 voters before there is
17 standing as a matter of right before the Site Evaluation
18 Committee. That's in the language. And, we've urged the
19 Science, Technology & Energy Committee to change that
20 language to "adversely affected" property owner.

21 VICE CHAIRMAN GETZ: Commissioner Bald.

22 CMSR. BALD: I'm a little confused.
23 When was the last time we got involved on eminent domain
24 on any project?

1 VICE CHAIRMAN GETZ: Mr. Iacopino.

2 MR. IACOPINO: We do not. I think what
3 the position being posited to you is that a applicant
4 could come in and say "I want to build a plant here or
5 there." If they've always owned the property or had a
6 lease or had, at least for where the footprint of the
7 plant is, has had ownership interests or equity interests
8 in the title to that property, I can't imagine that we
9 would ever just let some company come and say "I want to
10 build a plant on, you know, Mr. Smith's land." We
11 wouldn't have the authority to do that. So, we do not
12 have eminent domain.

13 I think what Mr. Cunningham may be
14 addressing is, once a plant is built, and the
15 environmental aspects that go beyond the footprint of the
16 -- of where the facility is actually located itself, that
17 there may be impacts on abutters and people downstream or
18 upstream, even far away, I think that may be more of what
19 he's speaking about, more of a constructive eminent domain
20 through the environmental effects. But I think that the
21 statute addresses, that's why we have this entire process,
22 to weigh what those effects will be on the greater
23 community, and to decide and weigh the relative merits of
24 the application.

1 We've never -- We don't have authority
2 to do eminent domain. Unless the PUC or the state --

3 VICE CHAIRMAN GETZ: I think the
4 difference between an actual taking of real property and
5 some, I guess, constructive taking of other types of
6 property rights, which I guess is the theory, that there's
7 some interference with other landowners' use of their
8 property or enjoyment of their property in some way. So,
9 I think that's the theory.

10 MR. CUNNINGHAM: Mr. Chairman, may I
11 respond to what my concern is? For example, in the North
12 Country, we know, in the loop, there's inadequate
13 transmission capability. So, and suppose a developer
14 comes in and says "Look, I want to build X plant, and I
15 want to connect to the loop." And, so, there's additional
16 transmission needed. To do the additional transmission,
17 the towers may have to be enlarged and the width of the
18 right-of-way may have to be enlarged. And, once that
19 decision is made, that land has to be acquired. If a
20 landowner does not wish his property along the existing
21 right-of-way to be acquired, then it can be taken by
22 eminent domain, because of the decision of the Site
23 Evaluation Committee. That's my suggestion. That, if
24 there's structures or facilities that need to be expanded

1 or enlarged, for example, along an existing transmission,
2 because of the need to upgrade transmission, he's going to
3 be subject to eminent domain. And, I'm not suggesting
4 that this Committee has any eminent domain authority at
5 all. What I'm suggesting is, is that the Committee, once
6 it decides that this is an appropriate location for
7 upgrading transmission, then it is a public purpose for
8 eminent domain purposes. And, the landowner basically has
9 no say in that.

10 VICE CHAIRMAN GETZ: Well, I guess, I
11 mean, these are issues of substantive law that I think go
12 beyond the organizational and procedural rules. But we
13 have your public comment and your concerns about these
14 issues.

15 MR. CUNNINGHAM: Yes.

16 VICE CHAIRMAN GETZ: Mr. Harrington.

17 MR. HARRINGTON: Yes, just a follow-up,
18 because I don't know if I've got a misdated one, but we're
19 talking about the organizational rules, "102.15
20 "Petitioner" means:". Are you talking about adding a new
21 section 102.15 or are you talking about adding it to the
22 existing 102.14, which is now ""Petitioner" means:"?

23 MR. CUNNINGHAM: My suggestion there is
24 an addition.

1 MR. HARRINGTON: So, a new section
2 102.15?

3 MR. CUNNINGHAM: Yes. Correct.

4 MR. HARRINGTON: Okay. And, what part
5 of the law does that -- where is the statutory authority
6 for that.

7 MR. CUNNINGHAM: It's a suggestion only.
8 There is no statutory -- statutory authority for it. One
9 of the suggestions we make in the pending bill is that
10 that language be modified, so any person adversely
11 affected has the right to appear before the Committee as a
12 matter of right. At present, there is no suggestion --
13 there is no authority in the statute to adopt this rule.
14 It is simply a point I wanted to make.

15 MR. HARRINGTON: And, can I just
16 follow-up? Maybe this is just to -- I'm not even sure
17 this is the right venue on this. But, in reading the
18 section 102.14, I'm still -- I can't follow, quite follow
19 the logic about Part (b). It says the "Petitioner", and
20 then it lists "a petition endorsed by 100 or more
21 registered voters", "a petition endorsed by 100 or more
22 registered voters from abutting communities", "a
23 petitioned endorsed by the board of selectmen", "or a
24 petition filed by the potential applicant; or" and then we

1 -- does that "or" apply to the section which is now (b),
2 "a person who files a petition as defined in 102.13(b)",
3 which is "other formal written request asking the
4 Committee to take action". Could that logic be then to
5 anybody who files a formal written request asking the
6 Committee to take action is a "petitioner" under
7 102.14(b)? It seems like something's not right in the
8 logic there, unless I'm missing it or I'm not reading it
9 correctly.

10 MR. CUNNINGHAM: The way I read the rule
11 is that, unless the Committee decides, and unless you have
12 one of the existing categories in the rule, you have no
13 right to appear before the Committee to be heard, unless
14 the Committee, in its discretion, allows you the right to
15 be heard. My suggestion is that, if you are adversely --
16 you or your property are adversely affected by a siting
17 decision, you should have, as a matter of right, the
18 ability to appear before the Committee.

19 MR. HARRINGTON: Well, I understand your
20 position. But I think this is maybe something the
21 Committee needs to look at, because maybe somebody can
22 explain it to me later, by right now I'm not following.

23 MS. AMIDON: This is --

24 VICE CHAIRMAN GETZ: Ms. Amidon.

1 MS. AMIDON: Yes, Commissioner Getz.
2 What I think that definition was and why there's an (a)
3 and a (b), I believe that we were trying to address the
4 issue where a party to a proceeding might bring a motion
5 for, you know, a petition for declaratory judgment or
6 something like that before the Committee, and consistent
7 with RSA 541-A, the procedural -- you know, the
8 Administrative Procedures Act for New Hampshire. So,
9 we'll figure that out. I can understand Mr. Harrington's
10 comment, and I think that we can address that.

11 VICE CHAIRMAN GETZ: Other comments from
12 the Committee?

13 CHAIRMAN BURACK: I have a question for
14 Mr. Cunningham, if I may. Your suggested language on Part
15 201.04(g)(4) speaks to requiring "a description of
16 alternatives that will minimize such impacts, including
17 the alternative of no action". I want to make sure that
18 the Committee understands what this language means as you
19 intend it. I thought I heard you say that what this means
20 is you're trying to, for the proposed project, and let's
21 just take a hypothetical, let's just assume that we're
22 talking about a wind project. The idea would be that
23 you're looking at "what can you do to minimize the impacts
24 of that wind project?" And, one of those could include

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1 simply not doing the project at all, that is disapproving
2 the project. What you're not --- Just want to make sure
3 that I'm clear that you're not saying "well, you should
4 look at, well, could we get the same amount of energy from
5 some other type project, for example, let's do solar,
6 instead of wind, and be able to come in and say "this is
7 something that should also be considered by the
8 Applicant"."

9 MR. CUNNINGHAM: I don't pretend to be
10 the best judge of which is the best project for which
11 location. What I'm suggesting is that the critical
12 environmental impacts of the project be examined. For
13 example, a 400-foot wind tower or a group of wind towers
14 is on some gorgeous ridge in the North Country in the
15 White Mountains, perhaps we should look at some other
16 area. So, I'm suggesting -- certainly, the Sierra Club
17 supports renewable energy projects. What we do not
18 support is destroying beautiful ridgelines with 400-foot
19 towers in the White Mountains, for example. So, as part
20 of that siting process, I think the Committee has a
21 responsibility, and it should be in the rules to examine
22 "is there a better location to put that wind project?"
23 And, if the Committee decides that there is no good
24 location for that wind project, I think the Committee

1 should make that decision.

2 CHAIRMAN BURACK: Thank you for that
3 clarification.

4 VICE CHAIRMAN GETZ: Anyone else from
5 the Committee? Commissioner Below.

6 CMSR. BELOW: I guess I have a -- I'm a
7 little confused about the suggestion from Mr. Cunningham
8 on -- his very first suggestion on 201.04(b)(3), which I
9 think you suggest, instead of having the Applicant provide
10 site information that shows the location of residences,
11 buildings, other structures and improvements, that they
12 provide "names and tax mailing addresses of property
13 owners within or adjacent to the site". Are you
14 suggesting that instead of the location of structures or
15 in addition to it?

16 MR. CUNNINGHAM: That would be in
17 addition, Commissioner Below. In other words, my point is
18 that everybody who owns property that's going to be
19 impacted by the siting decision should be notified in
20 writing, not just those who have residences or structures
21 or buildings on the property.

22 CMSR. BELOW: So, that's your concern,
23 not that this -- but that that be part of the application
24 process?

1 MR. CUNNINGHAM: It's an expansion of
2 the definition of who should be notified in writing.

3 CMSR. BELOW: Okay. Thank you.

4 VICE CHAIRMAN GETZ: Any further comment
5 or questions?

6 (No verbal response)

7 VICE CHAIRMAN GETZ: Well, I guess I'd
8 like to say something at this point, just for the benefit
9 of the members of the Committee. Historically, I think
10 I've tried to keep members of the Committee advised of my
11 involvement, both last year in Senate Bill 140 and this
12 year in House Bill 1562. I, on behalf of the Committee
13 and as Vice Chair, have been involved in both of those
14 legislative undertakings. And, what I have tried to do is
15 work with the sponsors, with the various committees, with
16 all of the interested parties, developers, environmental
17 groups and other interested parties, but the focus of my
18 involvement has been really what I look at is the typical
19 agency perspective of trying to advise everyone how the
20 process works, what the law as it currently is, at least
21 how we're interpreting it, and not to take any personal
22 policy positions or advocating any policy positions
23 through the process.

24 And, Mr. Cunningham has been involved in

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1 some of those, and I believe also has Ms. Geiger and Mr.
2 Patch from her firm, and numerous others. And,
3 Mr. Cunningham noted that I think you described it as a
4 "difference of opinion" in the current House bill. I
5 guess I would just put it that I was trying to describe
6 for the Committee a couple of things about some of the
7 legislative proposals, and I think a couple of those are
8 set out in his comments here. And, what I was trying to
9 highlight for Science, Technology & Energy Committee just
10 a couple of weeks ago is a couple of these proposals are
11 really proposals for a change in policy. And, what I was
12 trying to do was lay out for them what the policy choice
13 they have is, rather than taking a position whether I
14 personally or the Committee is arguing for or against a
15 change.

16 And, two things may merit some further
17 description. In Part 201.04(g)(4), there's a substitute
18 "An environmental assessment demonstrating a reasonable
19 certainty that the proposed facility will not cause
20 significant adverse environmental impacts". My reading of
21 the statute is there are two very different things
22 involved in that sentence that are not what the statute
23 requires now. One is it changes the burden of proof from
24 a "preponderance of evidence" to a "reasonable certainty".

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1 And, also, the underlying test in the statute is that the
2 Committee find, as we all saw in the Lempster case, that
3 "there will not be an undue adverse reasonable effect",
4 and here the language is changed to "will not cause
5 significant adverse environmental effects". So, those are
6 just different things.

7 And, the other thing I think is with
8 respect to this whole notion of a "petitioner", there may
9 be a merging or conflation of concepts. And, some of it
10 goes to the notion of, under the statute, there's a very
11 particular "petition" and "petitioner" process for some
12 groups to come to the Committee to petition the Committee
13 to take jurisdiction of a project that is not per se under
14 its jurisdiction. Again, the Lempster is a case in point,
15 where it was less than 30 megawatts, so we didn't per se
16 have jurisdiction, but we had the authority to take
17 jurisdiction. So, that's where this kind of complicated
18 paradigm of numbered 100 voters, school board -- or, not
19 "school boards" -- God forbid -- board of selectmen that
20 would come and take and ask us to take authority, which is
21 a different thing from the general use of the word
22 "petitioner" that appears in the rules and appears in
23 541-A, if an individual wants to petition to become a --
24 to intervene and become a party in a proceeding. And, of

1 course, in Lempster, we saw individuals who came in,
2 petitioned to intervene, asserted that they had some
3 right, duty, or interest affected by the proceeding, and
4 were granted intervention. So, I just want to try and
5 make that distinction, because I think that's implicated
6 by the filing.

7 And, I guess, if any of the Committee
8 members are concerned that I'm going too far in the dozens
9 of hours of testimony I've already given before the
10 Legislature, --

11 MR. HARRINGTON: Too late now.

12 VICE CHAIRMAN GETZ: -- please let me
13 know.

14 CHAIRMAN BURACK: And, if I may just
15 add, Commissioner Getz and I speak regularly about issues
16 before the Legislature, and we certainly are discussing
17 these matters, and understand that what -- what's before
18 the Committee and what issues we can appropriately speak
19 to. So, just want to make clear that we are in
20 communication on these matters on a regular basis.

21 VICE CHAIRMAN GETZ: Okay. Is there
22 anything else on the public hearing to take comment on the
23 organizational and procedural rules?

24 (No verbal response)

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1 VICE CHAIRMAN GETZ: Okay. Yes. I'll
2 note that the deadline for written comments is
3 February 21. Okay. So, then, we will close the portion
4 of the hearing dealing with the rulemaking.

5 CHAIRMAN BURACK: Very good. Is there
6 any other business to come before the Committee at this
7 time?

8 CMSR. BELOW: Well, might we just think
9 about how we're going to get to a final proposal.
10 Obviously, we have to wait till the 21st and the written
11 comments, if there's any additional ones they will be
12 circulated at that point. But I think -- I don't know if
13 there should be a little subcommittee to sort of try to
14 incorporate some of the suggested changes and circulate
15 those, working with Suzanne Amidon maybe. And, do we need
16 to schedule a meeting to vote on a final proposal?

17 VICE CHAIRMAN GETZ: I think, at the
18 last meeting, on December 13th, I was accorded the high
19 honor of being designated to, I guess, presiding officer
20 for the context of the procedural and organizational
21 rules, to coordinate the further efforts that we need in
22 this respect. So, I guess I would, rather than putting
23 folks on the spot here, would be happy to entertain
24 volunteers who would work as part of a subcommittee to

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1 review the comments. And, I guess the -- I guess it's
2 probably important that that be a number less than a
3 quorum, so two, three, four folks would be a useful
4 number, to kind of funnel the comments, after they're all
5 here, and to compose a new draft. So, I will just send
6 out an e-mail asking for volunteers for that process.
7 And, then, once we've got that in hand, then I would make
8 a proposal for the next public meeting to address a
9 revised draft of the 100 and 200 rules.

10 Any other comment or suggestions on that
11 approach?

12 CMSR. BELOW: Sounds good.

13 CHAIRMAN BURACK: Okay. Anything else
14 to come before the Committee at this time?

15 DIR. IGNATIUS: Do we need to schedule a
16 meeting to vote on a final proposal?

17 VICE CHAIRMAN GETZ: We will. And, I
18 guess I was thinking some of that may be driven by --
19 well, I guess we could do this either way. We could
20 either try to work on the revised rules, and then see what
21 progress we've made and schedule a date. Or, we could
22 schedule a date, which will drive the revising of the
23 rules. I don't know, Ms. Amidon, is there some deadline,
24 as part of the rulemaking process, that we should be aware

1 of?

2 MS. AMIDON: No, not at this point, not
3 with this Initial Proposal. I think, actually, I was
4 looking at your meeting, your hearing with respect to the
5 prior proceeding, on the Newington facility, and looking
6 at that as a possible date.

7 CHAIRMAN BURACK: If I may, what I might
8 -- what I would suggest is that we at least tentatively
9 target April 28 as a date by which we might have a final
10 proposal available far enough ahead of time so that we
11 could at least consider it at that time, possibly take it
12 up for final adoption at that time. If this April 28th
13 final hearing for the Newington Energy matter ends up
14 being accelerated, because we don't have intervenors in
15 the other matter, we may find we don't have sufficient
16 time to be able to work this rules process through. But,
17 if we can, it would be helpful if we can have both of
18 these matters considered at the same time, so we won't
19 have to schedule a separate meeting specifically to take
20 up the rules.

21 VICE CHAIRMAN GETZ: Or, if we see that
22 we're making real progress on the revision, then I can
23 circulate to see what the schedules are to see if we can
24 convene a quorum.

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1 CHAIRMAN BURACK: Okay. We could that
2 as well. Everyone's good with this?

3 (No verbal response)

4 CHAIRMAN BURACK: Okay. Anything else?

5 CMSR. BELOW: I move we adjourn.

6 CHAIRMAN BURACK: Motion to adjourn.

7 All in favor?

8 DIR. SCOTT: Second.

9 CHAIRMAN BURACK: Second by Mr. Scott.

10 All in favor?

11 (Multiple members indicating "aye".)

12 CHAIRMAN BURACK: We stand adjourned.

13 Thank you.

14 (Whereupon the public hearing ended at
15 10:42 a.m.)

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